

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No.: EB-09-TC-452
)	
Worldwide Industrial Enterprises, Inc.)	NAL/Acct. No.: 201132170018
)	
Apparent Liability for Forfeiture)	FRN: 0020765145
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 7, 2011

Released: April 7, 2011

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Worldwide Industrial Enterprises, Inc. (“Worldwide”)¹ apparently willfully and repeatedly violated section 227 of the Communications Act of 1934, as amended (“Act”), and section 64.1200(a)(3) of the Commission’s rules (“Rules”) and the Commission’s related orders, by delivering 17 unsolicited advertisements, or “junk faxes,” to the telephone facsimile machines of 17 consumers.² Based on the facts and circumstances surrounding these apparent violations, we find that Worldwide is apparently liable for a forfeiture in the amount of \$87,500.

II. BACKGROUND

2. The Telephone Consumer Protection Act of 1991 (“TCPA”) was enacted by Congress to address problems of abusive telemarketing, including junk faxes.³ Unsolicited faxes often impose unwanted burdens on the called party, including costs of paper and ink, and making fax machines unavailable for legitimate business messages. Section 227(b)(1)(C) of the Act makes it “unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement.”⁴

¹ According to publicly available information, Worldwide has offices at 720 Shore Road, Lindenhurst, NY 11767 and 656 Wellwood Avenue, Lindenhurst, NY 11757. Frank Tantalo, CEO, is listed as the contact person for Worldwide. Accordingly, all references in this NAL to “Worldwide” also encompass the foregoing individual and all other principals and officers of this entity, as well as the corporate entity itself.

² See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order and Third Order on Reconsideration*, 21 FCC Rcd 3787 (2006).

³ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394, *codified at* 47 U.S.C. § 227. See also Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005).

⁴ 47 U.S.C. § 227(b)(1)(C). The prohibition is subject to certain exceptions, such as if the sender has an “established business relationship” (“EBR”) with the recipient; and the sender obtained the facsimile number from the recipient through voluntary communication in the context of an EBR, or from a directory, advertisement, or site on the Internet to which the recipient voluntarily and publicly provided its facsimile number. In addition, the unsolicited ad
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3. On November 9, 2009, in response to a consumer complaint alleging that Worldwide had faxed unsolicited advertisements, the Enforcement Bureau (“Bureau”) issued a junk fax citation⁵ to Worldwide, pursuant to section 503(b)(5) of the Act.⁶ The Bureau cited Worldwide for using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements to a telephone facsimile machine, in violation of section 227 of the Act and the Commission’s related rules and orders. Worldwide did not respond to the citation. Despite the citation’s warning that subsequent violations could result in the imposition of monetary forfeitures, we have continued to receive additional consumer complaints indicating that Worldwide continued to send junk faxes *after* issuance of the citation.⁷ We base our action here specifically on complaints filed by 17 consumers establishing that Worldwide sent 17 unsolicited advertisements to telephone facsimile machines between February 10, 2010 and April 27, 2010.⁸

III. DISCUSSION

A. Violations of the Commission’s Rules Restricting Unsolicited Facsimile Advertisements

4. Each of the consumers listed in the Appendix has provided evidence that Worldwide apparently used a telephone facsimile machine, computer, or other device to send the consumer one unsolicited advertisement.⁹ Further, according to the complaints, the consumers did not have an established business relationship with Worldwide, and did not give Worldwide permission to send the facsimile transmissions.¹⁰ Based on the entire record, including the consumer complaints, we conclude that Worldwide apparently violated section 227 of the Act and section 64.1200 of the Rules and the Commission’s related orders by sending 17 unsolicited advertisements to 17 consumers’ facsimile machines.

B. Proposed Forfeiture

5. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each violation of the Act, or of any rule, regulation, or order issued by the Commission under the Act, by a non-common carrier or other entity not specifically designated in section 503 of the Act, after we have first issued a citation to the entity, as we have in this case. In exercising such authority, we are to take

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must notify the recipient how to opt-out of receiving future such ads, subject to certain requirements. The Commission has adopted implementing rules. 47 C.F.R. § 64.1200(a)(3).

⁵ Citation from Joshua P. Zeldis, Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-09-TC-452, issued to Worldwide on November 9, 2009.

⁶ See 47 U.S.C. § 503(b)(5) (requiring the Commission, before assessing a forfeiture against any person who does not hold, or is not an applicant for, a license, permit, certificate, or other authorization issued by the Commission, to first issue a citation for any violation of the Act or of the Commission’s rules or orders).

⁷ See Appendix for a listing of the consumer complaints against Worldwide requesting Commission action for sending junk faxes post-citation.

⁸ We note that evidence of additional instances of unlawful conduct by Worldwide will result in further enforcement action.

⁹ The facsimile transmissions advertise concrete, metal, and wood coatings. The faxes at issue here therefore fall within the definition of an “unsolicited advertisement.” See 47 U.S.C. § 227(a)(5); 47 C.F.R. § 64.1200(f)(13) (definition previously at § 64.1200(f)(10)).

¹⁰ See, e.g., complaint dated March 23, 2010, from D. Fitzsimmons (stating that he never did any business with the fax advertiser, never made an inquiry or application to the fax advertiser, and never gave permission for the company to send the fax). The complainants involved in this action are listed in the Appendix.

into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹¹

6. We find that Worldwide is apparently liable for a forfeiture in the amount of \$87,500. The Commission has previously considered \$4,500 per unsolicited fax advertisement to be an appropriate base amount for violating the prohibition against sending unsolicited fax advertisements.¹² We apply that base amount to each of the 15 apparent violations. In addition, where the consumer requests the company to stop sending facsimile messages and the company continues to send them, the Commission has previously considered \$10,000 per unsolicited fax advertisement the appropriate forfeiture for such egregious violations.¹³ Here, two consumers each received one facsimile from Worldwide after specifically requesting that Worldwide cease sending them. Accordingly, we apply the \$10,000 amount to each of these two violations. Thus, a total forfeiture of \$87,500 is proposed. Worldwide will have the opportunity to submit evidence and arguments in response to this *NAL* to show that no forfeiture should be imposed or that some lesser amount should be assessed.¹⁴

IV. CONCLUSION

7. We have determined that Worldwide Industrial Enterprises, Inc. apparently violated section 227 of the Act and the Commission’s related rules and orders by using a telephone facsimile machine, computer, or other device to send 17 unsolicited advertisements to the 17 consumers identified in the Appendix. We have further determined that Worldwide Industrial Enterprises, Inc. is apparently liable for a forfeiture in the amount of \$87,500.

V. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the rules, 47 C.F.R. § 1.80, that Worldwide Industrial Enterprises, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$87,500 for willful and repeated violations of section 227(b)(1)(C) of the Communications Act, 47 U.S.C. § 227(b)(1)(C), and section 64.1200(a)(3) of the Commission’s rules, 47 C.F.R. § 64.1200(a)(3).

9. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Rules,¹⁵ that within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, Worldwide Industrial Enterprises, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

¹¹ 47 U.S.C. § 503(b)(2)(E); *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17100-01 ¶ 27 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

¹² See *Get-Aways, Inc.*, Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 1805, 1812 (1999); *Get-Aways, Inc.*, Forfeiture Order, 15 FCC Rcd 4843 (2000); see also *US Notary, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 16999, 17003 (2000); *US Notary, Inc.*, Forfeiture Order, 16 FCC Rcd 18398 (2001); *Tri-Star Marketing, Inc.*, Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 11295, 11300 (2000); *Tri-Star Marketing, Inc.*, Forfeiture Order, 15 FCC Rcd 23198 (2000).

¹³ See *Carolina Liquidators, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 16837, 16842 (2000); *21st Century Fax(es) Ltd., AKA 20th Century Fax(es)*, 15 FCC Rcd 24406, 24411 (2000).

¹⁴ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

¹⁵ 47 C.F.R. § 1.80.

10. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Worldwide shall also send electronic notification on the date said payment is made to Johnny.Drake@fcc.gov. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, SW, Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

11. The response, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division; and to Richard A. Hindman, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption. Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand or messenger-delivered mail should be directed, without envelopes, to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). See www.fcc.gov/osec/guidelines.html for further instructions on FCC filing addresses.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested and First Class mail to Worldwide Industrial Enterprises, Inc., Attention: Frank Tantalo, CEO, 720 Shore Road, Lindenhurst, NY 11757, Worldwide Industrial Enterprises, Inc., Attention: Frank Tantalo, CEO, 656 Wellwood Avenue, Lindenhurst, NY 11757, and Worldwide Industrial Enterprises, Inc. c/o Spiegel and Utera, P.A., P.C., Attn: Daniel Finnegan, Managing Attorney, 45 John Street, Room 711, New York, NY 10038.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Complainants and Violation Dates

Complainant received facsimile solicitations	Violation Date(s)
G. Livesay, Smith Moore Leatherwood LLP	4/13/2010
M. Marshall, Marshall Law Group, P.C.	4/13/2010
S. Stuart	4/14/2010
J. Hoeppner, Big Rapids Insurance Agency, Inc.	4/15/2010
D. Thomas, Waco Distributing Company	4/21/2010
R. Adams	4/22/2010
R. Newberry, AccountAbility for Business	4/27/2010
M. Whiting	4/22/2010
S. Hess	4/22/2010
M. Rhoades, Bob Moore Realty Company	4/27/2010
B. Newbert, Grove Madsen Industries	4/22/2010
W. Muhammad	4/29/2010
D. Bird, Museum of Indian Arts	4/22/2010
V. Carillo, State Farm Insurance	4/13/2010
L. Windsor	4/13/2010

Complainant received facsimile solicitations after requesting no more be sent	Violation Date(s)
T. Elder	4/28/2010
M. Flint	4/13/2010